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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,834	01/23/2002	Robert George Emberty	TUC920010107US1	7781
7590 05/18/2004				
Dale F. Regelman LAW OFFICE OF DALE F. REGELMAN 4231 S. FREMONT AVENUE Tucson, AZ 85714			EXAMINER	
			KLIMOWICZ, WILLIAM JOSEPH	
			ART UNIT	PAPER NUMBER
			2652	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/054,834	EMBERTY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William J. Klimowicz	2652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-55 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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*Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a carrier for use in a data storage and retrieval system, classified in class 369, subclass 30.4.
- II. Claims 11-34, drawn to an accessor with a fixturing assembly for use in a data storage and retrieval system, classified in class 720, subclass 632\* and/or Class 360, subclass 92 and/or Class 369, subclass 30.45.
- III. Claims 35-47, drawn to a method of processing movement within a data storage and retrieval system, classified in class 369, subclass 30.31.
- IV. Claims 48-55, drawn to a computer code which produces specific application-related accessing/transporting events within a data storage and retrieval system, classified in class 711, subclass 112 and/or subclass 115.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II and IV are each related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as an accessor used in a conventional data storage and retrieval device, not having the particulars of Groups I and IV. Invention I has separate utility such as a carrier used in a conventional data storage and retrieval device, not having the particulars of Groups II and IV. Invention IV has separate utility such as an media program code for producing application-specific events used in a conventional data storage and retrieval device, not having the particulars of Groups I and II. See MPEP § 806.05(d).

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Inventions I/II/IV (collectively) and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. In the instant case, the product as claimed can be used in a materially different process of using that product, such as a process not requiring the deliberate and sequential steps articulated in Group III, for the products and/or program code of Groups I, II and IV. See MPEP § 806.05(h).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

- \* Note that Class 720 is a recently completed reclassification project, drawn to subject matter relating to "DYNAMIC OPTICAL INFORMATION STORAGE OR RETRIEVAL," wherein subclass 632 is drawn to subject matter relating to a "Transferring mechanism," (two-indent under the classification schedule), under subject matter relating to "Single optical medium inserted protected" (Class 720, subclass 630 - one indent under the classification schedule, under the Class 720, Subclass 600 parent subclass of "PARTICULAR CABINET STRUCTURE FOR OPTICAL MEDIA."

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***Election of Species Requirement***

This application contains claims directed to the following patentably distinct species of the claimed invention:

**Carrier Species**

Specie I.      Figures 5 and 6A.

Specie II.     Figures 6B and 6C.

**Fixturing Assembly Species**

Species I'.    Figures 7-8B.

Species II'.   Figure 9.

Species III'.   Figure 10.

Species IV'.   Figures 11A, 11B.

Species V'.    Figures 7-8B.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed *Carrier Species* (I or II) and to further elect a single disclosed *Fixturing Assembly Species* (I' or II' or III' or IV' or V') for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant should further identify any claims considered generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

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thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

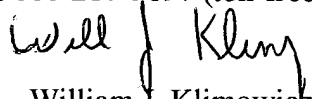
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Klimowicz whose telephone number is (703) 305-3452. The examiner can normally be reached on Monday-Thursday (6:30AM-5:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa T. Nguyen can be reached on (703) 305-9687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William J. Klimowicz  
Primary Examiner  
Art Unit 2652

WJK

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